

1 **WO**

2
3
4
5
6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
8

9 United States of America,) CR-09-8016-PCT-LOA
10 Plaintiff,) **ORDER**
11 vs.)
12)
13 Ora Seymour,)
14 Defendant.)
15 _____)

16 On August 10, 2009, the undersigned Magistrate Judge discovered that the
17 Judgment, docket # 20, entered in this criminal case on July 10, 2009, did not include the
18 waiver of drug testing as ordered at Defendant's July 10, 2009 sentencing. (docket # 18)
19 This omission was clearly a clerical error within the meaning of Rule 36, FED.R.CRIM.P., for
20 which this Court accepts ultimate responsibility.

21 Supervisory U.S. Probation Officer Rod R. McKone's July 29, 2009
22 Memorandum indicates that "[a]t the time of sentencing, the Court ordered the mandatory
23 drug testing provisions of 18 U.S.C. §§3583(a)(5) and 3583(d) be suspended. However, the
24 judgment does not reflect the condition being waived." Officer Rod R. McKone requests
25 "the judgement in this case be amended to reflect condition # 17[:] 'Unless suspended by the
26 Court, you shall submit to one substance abuse test within the first 15 days of supervision
27 and thereafter at least two, but no more than two periodic substance abuse tests per year of
28

1 supervision, pursuant to 18 U.S.C. §§ 3563(a)(5) and 3583(d) be suspended as originally
2 intended by the Court.”

3 The Court finds that Judgment herein may be properly amended to be
4 consistent with the Court’s oral pronouncement of Defendant’s sentence in open court at
5 time of sentencing. Rule 36, FED.R.CRIM.P.¹; *United States v. Goodwin*, 15 Fed.Appx. 511
6 (9th Cir. 2001); *United States v. Carr*, 421 F.3d 425, 432-433 (6th Cir. 2005) (Rule 36
7 “authorizes a court to correct only clerical errors in the transcription of judgments, not to
8 effectuate its unexpressed intentions at the time of sentencing.”).

9 Good cause appearing,

10 **IT IS ORDERED** that the Judgment herein is hereby amended to exclude the
11 the following paragraph which was suspended by the Court at the time of the July 10, 2009
12 sentencing:

13 17. Unless suspended by the Court, you shall submit to one substance
14 abuse test within the first 15 days of supervision and thereafter at least
15 two, but no more than two periodic substance abuse tests per year of
supervision, pursuant to 18 U.S.C. §§ 3563(a)(5) and 3583(d) be
suspended.

16 The Clerk is hereby directed to prepare and file Amended Judgment consistent with this
17 order.

18 **IT IS FURTHER ORDERED** that Defendant’s supervising probation officer
19 shall promptly provide actual notice and a copy of this Order and Amended Judgment to the
20 Defendant.

21 ///

22 ///

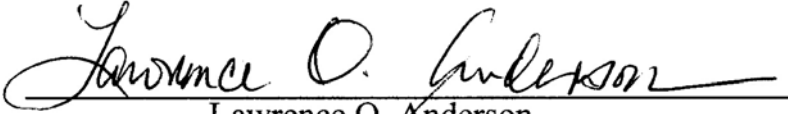
23 ///

24
25
26 ¹ Rule 36 Clerical Error

27 After giving any notice it considers appropriate, the court may at any time
28 correct a clerical error in a judgment, order, or other part of the record, or
correct an error in the record arising from oversight or omission.

1 **IT IS FURTHER ORDERED** directing the Clerk to provide a copy of this
2 order to counsel of record.

3 DATED this 14th day of August, 2009.

4 
5 Lawrence O. Anderson
6 United States Magistrate Judge